

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

Competitive Product Prices
Priority Mail
Priority Mail Contract 36

Docket No. MC2012-2

Competitive Product Prices
Priority Mail Contract 36 (MC2012-2)
Negotiated Service Agreement

Docket No. CP2012-6

ORDER APPROVING PRIORITY MAIL CONTRACT 36
NEGOTIATED SERVICE AGREEMENT

(Issued January 25, 2012)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Priority Mail Contract 36 to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

¹ Request of the United States Postal Service to Add Priority Mail Contract 36 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, December 20, 2011 (Request).

II. BACKGROUND

On December 20, 2011, in accordance with 39 U.S.C. § 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Priority Mail Contract 36 is a competitive product, and one that is “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. The Postal Service further asserts that the prices and classification underlying the contract are supported by Governors’ Decision No. 09-6.² Among the supporting documents, the Postal Service included a statement supporting the Request, a certification of compliance with 39 U.S.C. § 3633(a), a copy of Governors’ Decision No. 09-6, and a contract related to the proposed new product. In addition, the Postal Service submitted an application for non-public treatment of materials to maintain redacted portions of the contract, customer-identifying information, and related financial information filed under seal. Request, Attachment F.

On December 23, 2011, the Commission issued an order establishing the two dockets, appointed a Public Representative, and provided interested persons with an opportunity to comment.³

III. COMMENTS

The Public Representative filed comments on January 6, 2012.⁴ No other interested person submitted comments. The Public Representative raises three concerns with the contract: (1) that the expected cost coverage, while within the range required by Governor’s Decision 09-6, is so low that it increases the likelihood that the contract will not cover its costs in future years; (2) that the Postal Service, in its

² Docket No. MC2009-25, Decision of the Governors of the United States Postal Service on Establishment of Rates and Classes Not of General Applicability for Priority Mail Contract Group, April 27, 2009 (Governors’ Decision No. 09-6).

³ Order No. 1071, Notice and Order Concerning Addition of Priority Mail Contract 36 to the Competitive Product List, December 23, 2011.

⁴ Public Representative Comments, January 6, 2012 (PR Comments).

workpapers, estimates without explanation, that packaging will be provided below the average Priority Mail packaging unit cost; and (3) that the Postal Service failed to use the most recent inflation forecasts in its calculations. PR Comments at 2-3. These concerns notwithstanding, the Public Representative concludes that the instant contract appears to minimally comport with the requirements for competitive products “not of general applicability” in accordance with 39 U.S.C. § 3633(a) and 39 CFR 3015.7. *Id.* at 1, 3.

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the instant contract, the supporting data filed under seal, and the Public Representative’s comments.

Product list requirements. The Commission’s statutory responsibilities when evaluating the Request entail assigning Priority Mail Contract 36 to either the market dominant or competitive product list. See 39 U.S.C. § 3642; 39 CFR part 3020, subpart B. In making this determination, the Commission must consider the availability and nature of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. 39 U.S.C. § 3642(b)(3).

In the instant Request, the Postal Service asserts that it provides Priority Mail service in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and therefore that it can neither increase prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment D at 2. The Postal Service affirms that the contract partner supports the Request, that expedited shipping is widely available from private firms, and that it is unaware of any small business concerns that could offer comparable service to the contract partner. *Id.* at 3.

No commenter opposes the proposal to add Priority Mail Contract 36 to the competitive product list. Having considered the relevant statutory and regulatory

requirements and the Postal Service's supporting justification, the Commission finds that Priority Mail Contract 36 is appropriately classified as a competitive product.

Cost considerations. Because Priority Mail Contract 36 is a competitive product with rates or classes that are "not of general applicability," the Postal Service must also show that the contract covers its attributable costs, contributes to the Postal Service's institutional costs, and does not cause market dominant products to subsidize competitive products. 39 U.S.C. §§ 3632(b)(3), 3633(a) and 39 CFR 3015.5.

The Postal Service has submitted a certified statement, along with supporting revenue and cost data, which shows that it satisfies these requirements. As the Public Representative notes, the Postal Service relies on FY 2010 data to demonstrate that the contract satisfies applicable statutory and regulatory requirements. Based on more recent FY 2011 data, the instant contract's cost coverage is below the minimum specified in Governors' Decision No. 09-6, but is still slightly above 100 percent.⁵ PR Comments at 2.

The instant contract has a term of 3 years, but may be terminated by either party on 30 days' advance notice. Request, Attachment D at 4. Prices in the subsequent years of the contract are subject to escalation. While it is the Commission's expectation that the contract will satisfy applicable statutory requirements for its term, should experience under the contract prove otherwise, the Postal Service should exercise its right to terminate the contract or seek to renegotiate it.⁶ In any event, the instant contract will be subject to review in future Annual Compliance Determinations. Based

⁵ Governors' Decision 09-6 authorizes the Postal Service to execute contracts that, among other things, satisfy minimum and maximum cost coverages. Governors' Decision 09-6 at 2. Using FY 2010 unit cost data, the cost coverage for the instant contract falls within the range required by Governors' Decision 09-6. Using FY 2011 unit cost data, the cost coverage for the instant contract falls below the specified minimum, making reliance on Governors' Decision 09-6 somewhat problematic. See 39 U.S.C. § 3632(b)(3). However, the cost coverage is above 100 percent.

⁶ Some Postal Service negotiated service agreements include a cost contingency provision. It may wish to consider the addition of such provision in future Priority Mail contracts where cost coverage raises a concern.

on the information submitted, the Commission agrees that Priority Mail Contract 36 complies with the provisions applicable to rates for competitive products.

Other considerations. By its terms, the contract becomes effective on the day on which the Commission issues all necessary regulatory approval and it expires 3 years later. *Id.* Attachment B at 3-4. The Postal Service shall notify the Commission of the effective dates of the instant contract. If the instant contract terminates prior to the scheduled termination date, the Postal Service shall inform the Commission prior to the new termination date.⁷

Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the contract.

In conclusion, the Commission approves Priority Mail Contract 36 as a new product. The revision to the competitive product list appears below the signature of this Order and is effective immediately.

V. ORDERING PARAGRAPHS

It is ordered:

1. Priority Mail Contract 36 (MC2012-2 and CP2012-6) is added to the competitive product list as a new product under Negotiated Service Agreements, Domestic.
2. The Postal Service shall promptly notify the Commission of the effective dates of the contract, and shall notify the Commission if the instant contract terminates prior to the scheduled termination date as discussed in this Order.

⁷ In its application for non-public treatment of materials, the Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* Attachment F at 7. The Commission has consistently denied similar requests. See, e.g., Order No. 563, Docket Nos. MC2011-1 and CP2011-2, Order Approving Express Mail Contract 9 Negotiated Service Agreement, October 20, 2010, at 6-7.

3. Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the contract.
4. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Shoshana M. Grove
Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 CFR part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission’s order in Docket Nos. MC2012-2 and CP2012-6. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2000 Competitive Product List

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Negotiated Service Agreements

Domestic

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Priority Mail Contract 36 (MC2012-2 and CP2012-6)

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